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2 **UNITED STATES DISTRICT COURT**
3 **FOR THE DISTRICT OF NEW JERSEY**

4 **IN RE: NEW JERSEY TAX SALES**
5 **CERTIFICATES,**

6 **CIVIL ACTION NUMBER:**

7 **JEANNE VAN DUZER LANG BOYER, et**
8 **al**

9 **Plaintiffs,**

10 **3:12-cv-01893-MAS-TJB**

11 **-vs-**

12 **FAIRNESS HEARING**

13 **ROBERT W. STEIN, et al.,**

14 **Defendants.**

15 Clarkson S. Fisher United States Courthouse
16 402 East State Street
17 Trenton, New Jersey 08608
18 April 25, 2016

19 **B E F O R E:** HONORABLE MICHAEL A. SHIPP
20 UNITED STATES DISTRICT JUDGE

21 **A P P E A R A N C E S:**

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24 Attorneys for the Class Plaintiffs.

25 HAGENS, BERMAN, SOBOL, SHAPIRO, LLP
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27 Attorneys for the Class Plaintiffs.

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30 Attorneys for the Objector, Arlene Davies.

31 Certified as True and Correct as required by Title 28,
32 U.S.C., Section 753
33 /S/ Cathy J. Ford, CCR, CRR, RPR

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35

1 A P P E A R A N C E S

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18 Attorneys for the Defendants PAM and Carabellese.

19 DILWORTH PAXSON, LLP
20 BY: JAY KAGAN, ESQUIRE
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22 Attorneys for the Defendants, Plymouth Park Tax Service.

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1 THE DEPUTY COURT CLERK: All rise.

2 (Open court begins at 10:07 a.m.)

3 THE COURT: Please be seated. Good morning, counsel.

4 COUNSEL: Good morning, your Honor.

5 THE COURT: We are here today in the matter of a
6 fairness hearing for in re: New Jersey Tax Sales Certificates,
7 Docket Number 12-1893.

8 May I have appearances of counsel, please.

9 MR. GREENBERG: Good morning, your Honor. Bruce
10 Greenberg, Lite, DePalma, Greenberg in Newark on behalf of the
11 Plaintiffs and the Class.

12 THE COURT: Good morning.

13 MR. ZWEIG: Good morning, your Honor. Jason Zweig
14 from Hagens Berman on behalf of the Class Plaintiffs.

15 MR. PIZZIRUSSO: Good morning, your Honor. James
16 Pizzirrusso, counsel on behalf of the Class Plaintiffs.

17 THE COURT: Good morning.

18 MR. DRASCO: Good morning, your Honor. Dennis J.
19 Drasco, Lum, Drasco and Positan for the Objector Arlene
20 Davies. And as I did at the preliminary hearing, I'd like to
21 introduce to the Court, Tom Wiegand and Hays Gorey, who will
22 be arguing this morning.

23 MR. WIEGAND: Thank you, your Honor. Good morning.

24 THE COURT: Good morning to you.

25 MR. STONE: Shalom Stone, Brown, Moskowitz and Kallen

1 for the Defendants Phoenix and Caiola.

2 THE COURT: Good morning.

3 MR. ARP: Good morning, your Honor. Jarrett Arp of
4 the Gibson Dunn firm for Defendant Robert Rothman.

5 THE COURT: Good morning to you as well.

6 MR. JANOVE: Good morning, your Honor. Steven Janove
7 on behalf of the Farber Defendants.

8 THE COURT: Good morning.

9 MR. REED: Good morning, your Honor. Steve Reed from
10 Morgan Lewis representing the Crusader Defendants.

11 THE COURT: Good morning.

12 MR. HUGHES: Good morning, your Honor. William J.
13 Hughes, Jr. of Cooper Levenson on behalf of the M.D. Sass
14 Defendants.

15 MR. BONCHI: Good morning, your Honor. Keith Bonchi,
16 Goldberg Mackler law firm, on behalf of the May Defendants and
17 the DelVecchio Defendants.

18 MS. KALLER: Good morning, your Honor. Emily Kaller
19 Greenbaum, Rowe, Smith and Davis on behalf of PAM Defendants
20 and Pat Carabellese.

21 MR. WARREN: Good morning, your Honor. I'm Perry
22 Warren from Maselli Warren, local counsel for Plymouth Park
23 Tax Services, LLC.

24 THE COURT: Good morning.

25 MR. COHEN: Good morning, your Honor. Jonathan Cohen

1 Covington and Burling also for Plymouth Park.

2 THE COURT: Anyone else?

3 MR. KAGAN: Good morning, your Honor. Jay Kagan

4 Dilworth Paxson for Crestar Defendants.

5 THE COURT: So, with all the appearances being on the
6 record, having received the Plaintiffs' motion for a final
7 approval of all class settlements, final certification of the
8 settlement class, final approval of the plan of allocation and
9 for attorney fees and reimbursement of expenses, the Court at
10 this time is prepared to conduct a fairness hearing.

11 So, with that, by way of background, the named
12 Plaintiffs allege that Defendants engaged in a conspiracy to
13 unlawfully manipulate the interest rates associated with the
14 Tax Sale Certificates and public auctions in New Jersey from
15 August 13, 2013 to October 30, 2015.

16 The Court granted preliminary approval for 20
17 separate settlements with Defendants in this action totaling
18 \$9,585,000 in cash, plus interest and discounts, for those
19 class members who are still subject to a Tax Sale Certificate.

20 Furthermore, by order dated October 30th, 2015, the
21 Court approved class notice and the notice of plan. In
22 accordance with the Court's orders, the claims administrator
23 completed sending notice to class members on January 13, 2016.
24 Class members had until March 14, 2016 to opt out.

25 The Court received a motion for final approval of the

1 settlement on February 16, 2016. The Court received two
2 objections to the settlement, four individuals, two of whom
3 the Zahns or Mrs. Zahn had the same lien, opted out of the
4 Class; the Court received responses from Plaintiffs to the
5 objections of Ms. Arlene Davies; and then a fairness hearing
6 was set for today.

7 So, with respect to today's fairness hearing, the
8 Court will hear from class counsel for Plaintiffs on class
9 certification, the fairness of the settlement, the plan of
10 allocation and class counsel's motions for attorney fees and
11 costs. Thereafter, the Court will hear objections and related
12 statements.

13 Class counsel, when you give your presentation to the
14 Court, I'd like for you to address why this Court should: 1,
15 certify the class; 2, approve the proposed settlements in the
16 case and overrule the objections submitted to the Court; 3,
17 approve the plan of allocation; 4, grant attorney fees and
18 costs and; 5, grant any incentive awards to the named
19 Plaintiffs.

20 So, with that, counsel, you want to proceed. Mr.
21 Zweig.

22 MR. ZWEIG: Good morning, again, your Honor. Good to
23 see you again.

24 THE COURT: Also counsel, just so that we are clear
25 for the record, can you please make sure you state your name

1 before you speak at all times, there is so many counsel here
2 today, we want to make sure our court reporter isn't driven
3 crazy trying to figure out who's who.

4 MR. ZWEIG: Understood. Jason Zweig for the class
5 Plaintiffs.

6 As your Honor noted, we are here today on final
7 approval of the 20 different settlement agreements with 21
8 different defendant groups that provide 9.585 million in
9 compensation, plus interest.

10 In addition, for those who are still the subject of
11 lien owned by the Defendants, those property owners will
12 receive up to 15 percent in discounts off of the amount that
13 they owe. We think those are -- it's a very good result here
14 for the class, and I'm going to explain to you why that's so.

15 As I go through the various reasons why these are
16 great settlements for the class, I'm going to address some of
17 the objections that have been made by Mr. and Mrs. Davies, not
18 because I think that they have any merit whatsoever, just in
19 terms of the presentation I think it would go better as I
20 address the fairness of the settlements if I take on some of
21 the arguments that they raise. But certainly, we don't think
22 they have any merit. Most importantly, we don't believe they
23 have any standing whatsoever to be here.

24 So, I will address the standing issue after I address
25 the fairness of the settlements. In addition, I would note

1 that the Court is certainly well within its right, although
2 the Court has acknowledged it wants to hear from the Objectors
3 not to even have them speak today. They didn't file pursuant
4 to the Court's order a notice of intent to appear, unlike some
5 other class members, but certainly it's within the Court's
6 discretion to hear from them if they want.

7 As the Court is aware, settlements in this circuit
8 and in this district are governed by the eight -- nine factors
9 in the *Girsh v. Jepson* case. The first factor is complexity,
10 expense, and likely duration of the litigation.

11 At first blush, to some, who are not familiar with
12 the facts of the case, this might seem like an easy case. You
13 have 15 guilty pleas. And in addition, you have what I'll
14 call the widow and orphan aspect of this case, which is that
15 unfortunately this case involves people's homes, to some
16 extent, being foreclosed on because we're talking about
17 property tax liens. And under New Jersey State law, those who
18 buy property tax liens can, if the lien goes unpaid, foreclose
19 on a New Jersey property owner's property to get the monies
20 that they paid for that lien. And unfortunately, that does
21 create a situation where some people may lose their homes.

22 I've talked to dozens and dozens and dozens of class
23 members over the last three years who have called me and asked
24 me what they can do about the foreclosure of their home with
25 regards to the conduct at issue in this case. And as I told

1 each one of them, unfortunately, there is not much I can do
2 vis-à-vis this case. This case is about one aspect only of
3 the property tax lien; and, that is, the interest rate
4 associated with the lien. Nobody conspired to have people not
5 pay their property taxes. Unfortunately, for whatever
6 reasons, certain people couldn't and a property tax lien
7 arose. But the only wrongdoing here relates to the interest
8 rate associated with that lien. And so, often times people
9 look at this case and they say again, there are 15 guilty
10 pleas, people are losing their homes but one needs to focus on
11 the issues of this particular litigation.

12 And this particular litigation is complex. This is
13 an antitrust class action which, by definition, and numerous
14 courts have held, are complex cases. Here, there were over
15 5,600 property tax lien auctions that took place during the
16 class period.

17 And with respect to each one of those, because this
18 is an antitrust class action, Plaintiffs would be required to
19 prove two things: 1, which of those 5,600 liens were the
20 subject of the conspiracy; and 2, even if you can establish
21 that a particular lien was the subject of a conspiracy, in
22 order to prove damages we're going to be required to show what
23 that lien would have sold for in the absence of a conspiracy,
24 what interest rate would that lien have sold for if there was
25 no conspiracy. Those are two very difficult tasks.

1 Just to try and establish on damages what the liens
2 would have sold for, absent the conspiracy, just as an
3 example, one would have to create a database of all of the tax
4 liens sold during the class period, what those liens were sold
5 for, how many bids were put in with respect to each of those
6 liens.

7 And while some of the Defendants may have some of
8 that data, there were a whole host of liens purchased by
9 non-defendants that would also have to be obtained. And not
10 only that, we'd have to go back to before the period, 1998,
11 and get that data because we'd have to show what the -- a
12 market free of collusion would look like.

13 We'd also have to look at the data after the class
14 period to see what a market free of collusion would look like
15 in order to establish what our damages would be. And that is
16 to say the least, a monumental task. A task that the
17 Objectors, of course, have the benefit of completely
18 disregarding because they haven't been litigating this case.
19 But that is a task which would easily cost millions of dollars
20 in expert fees and data costs.

21 We face sophisticated defense counsel, some of which
22 are here today who will mount a vigorous defense. This case
23 has already lasted three years. And surely would have lasted
24 years longer.

25 I would like to -- I'd be remiss if I didn't thank

1 the Court, as well as Judge Bongiovanni in shepherding this
2 case to where it is today, including hosting settlement
3 conferences. I think all of those things have helped pushed
4 this case in an expeditious fashion, so thank you for that,
5 your Honor.

6 The second factor under *Jepson*, reaction of the class
7 to the settlement. We sent out 93,000 plus postcards, notice
8 postcards to potential members of the class. That number is
9 in the administrator affidavit that was filed by Gilardi on
10 April 11, I believe it was. And as the Court has noted, we
11 had an overwhelmingly positive response from the class. We
12 had only three opt outs and two objections. One of which was
13 by an Objector who lacks standing. And from -- even before we
14 were appointed for class counsel has told us that they would
15 fight us every step of the way. So, we think that's
16 incredibly positive response from the class. There's
17 virtually no settlement today, class settlement where
18 Objectors don't appear. There is a whole industry of
19 Objectors. And so the fact that there's only this one fatally
20 flawed Objector, we think is an overwhelmingly positive
21 response from the class.

22 The next factor, your Honor, stage of the proceedings
23 and the amount of discovery completed. And this factor really
24 is meant to inquire into what counsel's -- Class Counsel's
25 level of knowledge was in reaching the settlement so that the

1 Court can evaluate what information it had before it, before
2 them, to understand whether the settlements were good
3 settlements or not.

4 Some courts have approved settlements where counsel
5 have spent as little as 37 hours on a class settlement. We
6 cite the case, *Gutworth*, at Page 17 of our moving brief, where
7 this District approved a class settlement where Class Counsel
8 spent as little as 37 hours. Here, we obviously spent much
9 more than that. As we detailed in our declaration, we put in
10 more than 7,000 hours and had a full appreciation of the
11 strengths, the weaknesses, and the size of our claims.

12 The Objectors contend that the settlement is not fair
13 since there was no formal discovery taken. As the Third
14 Circuit recently held, and we put it into the Court, the Third
15 Circuit's recent opinion on the NFL Concussions litigation
16 where the Third Circuit expressly declined to adopt a rule
17 where formal discovery needs to take place with regards to
18 class settlements, completely rejecting the Objectors'
19 position on this issue.

20 THE COURT: Wasn't that because there was so much
21 information already in the public domain, unlike what we have
22 here?

23 MR. ZWEIG: That was one piece of it. I would say,
24 your Honor, I would respectfully disagree. Well, there wasn't
25 a ton of information here in the public domain, but there was

1 information in the public domain and there was information
2 that we received from the Defendants.

3 So, if you look at our joint declaration that we put
4 in in support of our motion, we talked about all of the
5 criminal proceedings that have been -- have gone on.

6 Specifically, we cite to the fact that in each one
7 of -- I think it's each one of those. There is a delineation
8 of the amount of liens that were at issue with respect to that
9 particular criminal defendant. And in almost every case we
10 received in settlement as much as the liens that were at issue
11 in those criminal proceedings. And that's just -- not only
12 the interest but the principal. So the amount of the
13 settlement almost equaled as much as the liens that were at
14 issue with respect to each of those criminal defendants.

15 Furthermore, except for the Crusader Defendants whose
16 fine was \$2 million payable over five years, all of the
17 individual defendants were being fined somewhere between 10
18 and \$20,000. Now that fine is supposed to roughly reflect the
19 harm that these people inflicted. And we recovered multiples
20 of that. In many cases, 10 times the amount that the
21 government got in criminal fines. So that's all in the public
22 record.

23 Furthermore, what we've put into the public record in
24 terms of our joint declaration is that with respect to these
25 settlements, we also received financial information from the

1 settling defendants which set out their financial condition,
2 the amount of liens, again, corroborating the figures that
3 were in the criminal papers that were filed publically,
4 corroborating those figures, in terms of how many liens were
5 affected by their conduct. And we also received almost
6 30,000 pages of documents from the Defendants, including the
7 documents that would be the core of our proof in any
8 litigation which are the bid books. We took the bid books and
9 we compared certain bid books across the Defendants to try and
10 come up with, for example, the 50 auctions that we identified
11 in our amended complaint.

12 So there was some information in the public domain,
13 as I said. We also received a significant amount of
14 information. And the fact that we recovered in settlement
15 multiples of what the criminal fines were in this case -- and
16 I think there was even a sentencing on Friday before Judge
17 Wigenton of Mr. Collins who was fined \$20,000, which is
18 consistent with all of the other fines that have taken place
19 so far.

20 THE COURT: Isn't it also part of Ms. Davies'
21 arguments, I believe, that these bid books were never made
22 available to the Court or to the other side? So when we start
23 talking about what's been made available, only you have had
24 access to the bid books; is that correct? Doesn't that
25 distinguish this from the NFL case altogether?

1 MR. ZWEIG: No. I would say no, your Honor. It is
2 correct that certainly we had the bid books and they were not
3 produced to the Objectors, but that's because they haven't
4 made a credible argument that these settlements are flawed in
5 any way. And the law is quite clear that unless they do so,
6 they're not entitled to them. Otherwise, it's just simply a
7 fishing expedition for Objectors to get into.

8 Furthermore, this is a different case than the NFL
9 case. There, you're talking about a much more complicated
10 case. In fact, I even have some clients in that case, where
11 you have a billion dollar settlement. You have complicated
12 issues of causation: general and specific causation. You have
13 complicated issues of class certification in terms of these
14 being personal injury type cases. It's going to require more
15 information than this case.

16 So, yes, it is true that the Objectors don't have the
17 bid books, but that's because they haven't made a showing that
18 they're entitled to see them. And we believe the public
19 record is sufficient to satisfy the record that these
20 settlements are fair.

21 In particular, all of the pleadings and papers and
22 each of the criminal proceedings that have taken place here
23 with respect to the Defendants who have pled guilty.

24 The fourth factor under *Jepson*, risk of establishing
25 liability. The risks of establishing class-wide and statewide

1 liability here are extremely high.

2 Again, while there are individuals who have pled
3 guilty, it is very unclear what utility those guilty pleas
4 will have here. Those guilty pleas, while it is true that
5 guilty pleas in general can be used as *prima facie* evidence of
6 liability in a civil antitrust case, the guilty pleas here are
7 extremely vague. They don't say specifically what auctions
8 were rigged. They make vague statements about their being --
9 that the defendant participated in a conspiracy to rig bids at
10 certain auctions with respect to certain liens throughout New
11 Jersey during a certain period of time. It's not clear how
12 useful those would be in any -- they certainly would have some
13 utility, of course. But it's not clear that they -- they
14 certainly wouldn't have the slam dunk effect that I think the
15 Objectors think that they would.

16 Although, there were 50 Defendants who have pled
17 guilty, we named -- I'm sorry, there were 15 Defendants who
18 have pled guilty, we named 50 Defendants. That's 35
19 Defendants that we'd have to prove were part of the conspiracy
20 who had no criminal exposure and will not be indicted. Some
21 of the Defendants that we named, like, Mr. Wolfson, Joseph
22 Wolfson, for example, were indicted. There were wiretaps that
23 were done with Mr. Wolfson and some of the cooperating
24 criminal Defendants at which they apparently were conspiring
25 as part of this conspiracy. Those tapes were played at Mr.

1 Wolfson's criminal trial. And even though, there were these
2 tapes and recorded conversations, Mr. Wolfson was acquitted in
3 full. These are difficult cases. One needn't look further
4 than the case of Mr. and Mrs. Davies themselves. There's not
5 a person on the face of the earth that believes that they were
6 wronged by this conspiracy more than Mr. and Mrs. Davies.
7 They tried to prove their claim for over three years. They
8 went to trial -- and we'll get into that in a little bit --
9 and they lost. They presented evidence and they lost. They
10 were unable to prove their case.

11 And again, there isn't a single person on the face of
12 this earth that believes that their lien was subject to the
13 conspiracy more than Mr. and Mrs. Davies. The fact is these
14 antitrust claims are complex.

15 In particular, the claims in this case, where you're
16 dealing with 5,600 auctions, each of which has combinations of
17 different defendants, some of which are in some cases are
18 non-defendants. They're difficult, difficult cases to
19 establish liability on a class-wide basis.

20 The risk of establishing damages is the fifth factor.
21 Even if the -- assuming liability was certain. And, of
22 course, we believe it is not, it still leaves open the
23 question of damages. I'd like to refer the Court to a
24 criminal prosecution that took place in Madison County
25 Illinois back in 2013. In that case, there was a tax lien

1 system similar to the system that exists here in New Jersey
2 where there are tax liens auctioned off and investors purchase
3 those tax liens, the bidding, I believe, starts at the same
4 interest rate, 18 percent, and is bid down. There was a
5 similar conspiracy including some of the tax officials.

6 The treasurer of Madison County was indicted and pled
7 guilty to participating in this conspiracy. During the
8 sentencing phase of this individual's criminal proceedings,
9 the government put in a memorandum -- and it's a public
10 record. And the case, by the way, your Honor is *U.S. v.*
11 *Bathon*, B-A-T-H-O-N, and that's case 13 CR 30025 in the
12 Southern District of Illinois, Federal Court, and the pleading
13 that I'm referring to is at ECF Number 19. In that case the
14 government said, we need to prove what the -- to try to get to
15 a restitution figure in terms of the harm that was inflicted
16 by this defendant, we need to try to understand what the liens
17 would have sold at had there been no conspiracy.

18 The government spoke to the defendant. The
19 government had an economist look at this. And basically they
20 said, it is not possible to come up with that figure in cases
21 like this. It's simply not possible. And so they didn't come
22 up with a figure because they couldn't.

23 Now, without tooting our own horn, your Honor, we
24 think we are pretty skilled and we'd be able to come up with a
25 system in which we'd be able to calculate damages but suffice

1 it to say it's no easy task. It's a task that is very, very
2 complicated. The Department of Justice has very, very able
3 lawyers. They couldn't do it in that particular case.

4 Now, the Objectors here claim that these settlement
5 amounts are just simply too low because this case is so easy.
6 They take our allegations in our complaint and they basically
7 assume that they're established facts. They assume -- and I
8 wish it were that simple, if complaints were established facts
9 then most of us would have a much easier job on our hands.
10 But, in fact, as your Honor knows, allegations in our
11 complaint are just that, they're allegations and they must be
12 proven.

13 Nonetheless, the Objectors state that the complaint
14 says that every year there are about \$200 million of tax liens
15 sold each year. And that the interest rate on those, they
16 assume, is 18 percent, on every single one of those liens;
17 therefore, the single damages for each year is \$36 million.
18 And if you take that number and multiply it by the amount of
19 years subject to the conspiracy, by 10, you come up with a
20 figure of about \$400 million. We only got \$9.585 million.
21 These settlement amounts are just too low. But you can't --
22 you can't do it that way.

23 First of all, we know that even liens that are sold
24 at 18 percent interest rate that's the rate that the auction
25 begins at. There are numerous cases where there is an

1 18 percent lien sold that wasn't the subject of a conspiracy.

2 There are numerous liens that were sold at somewhere
3 between zero and 18 percent. And so, then there are liens
4 that are sold at zero percent interest rate where the person
5 that is subject to the lien might be someone that does have
6 the means to satisfy the lien in due time and the investor
7 thinks it's a particularly attractive investment so they
8 decide to bid at zero percent interest rate.

9 In other words, that class member can have no injury
10 because there is no affected interest rate and they bid zero
11 percent and get the lien. And so, in those -- so you have all
12 of those scenarios. So you can't simply say that every lien
13 went off at 18 percent and, therefore, damages are \$36 million
14 a year. That's not reality. That's not what happened here.

15 Furthermore, your Honor, we know that there are a
16 number of investors out there that aren't defendants in this
17 case. What do you do with those liens? That \$200 million
18 figure includes people who weren't part of this conspiracy.

19 And while the Defendants here may comprise a
20 significant portion of that \$200 million figure, assuming
21 that's even the correct figure, there are significant numbers
22 of those who aren't defendants, whose liens can't be part --
23 and aren't part of our damages model.

24 Settlement, your Honor, avoids having to reach these
25 very, very difficult issues. Six, your Honor, risk of

1 maintaining a class action through trial.

2 The Defendants here have made it very clear from the
3 outset in virtually every filing that they've made before the
4 Court that a class cannot be certified here; and there's no
5 question that would have been -- they would have mounted a
6 vigorous defense, class certification defense here.

7 The Objectors have not made a single -- devoted a
8 single sentence in any of the filings they made to the Court
9 about class certification. And that's not surprising because
10 they recognize that that is a huge issue here.

11 Furthermore, and with no disrespect to them, I don't
12 believe they've ever been involved in certifying a class
13 before. It's possible I'm wrong on that, but it's certainly
14 not their main practice area. We do this day in and day out.

15 And given some of the recent Supreme Court
16 announcements, it's not an easy task, even on a
17 straightforward case. This is not that case. So, that is a
18 huge risk that we face going forward here.

19 The ability of the Defendants to withstand a greater
20 judgment is the seventh factor. And in that case, your Honor,
21 there were a number of Defendants here who did not have the
22 financial means to withstand a significant judgment.

23 In our declaration we put in sworn statements about
24 the financial information that was provided to us by these --
25 certain of these Defendants. It's all in the papers. I don't

1 feel the need, unless your Honor were to wanted me to, to go
2 through specifically which ones those were but it's all in our
3 joint declaration.

4 And with respect to many of the Defendants, we had
5 serious concerns about their ability to withstand a judgement
6 of any kind, let alone a significant judgment.

7 One Defendant, Mr. Mastellone, who we settled with
8 after we had an all-day mediation session with Bruce
9 Goldstein, who the Court appointed as a mediator. We
10 presented our case to him and we reached the settlement that
11 we had reached, that defendant had to take out a home equity
12 lien of credit to pay the settlement amount. So, many of
13 these Defendants are not from -- possess significant financial
14 means to satisfy a settlement.

15 Some of the Defendants can withstand a greater
16 judgment, but that is, as the Third Circuit noted in the NFL
17 case, that is true in any class action, that does not mean
18 more monies should be extracted from them.

19 For example, Crestar, who the Objectors keep saying,
20 and point to the Wolfson trial where there was some testimony
21 about the fact that they had 50 million in capital, that
22 defendant was in the conspiracy for three months. There was
23 no dispute about that. You're simply not going to be able to
24 get a recovery from that defendant simply because they have
25 some capital when the facts are that they've only been in it

1 for three months.

2 So, next, your Honor, the range of reasonableness of
3 the settlement fund. I think I've gone through many of the
4 reasons why we think the settlements are fair. And in terms
5 of the fairness of the settlements, I'd like to end that
6 section -- this part of my argument with the following quote
7 from the Third Circuit in the NFL case; and this is at -- this
8 is the National Football League Players' Concussion Injury
9 Litigation, the cite 2016 WL-1552205. And the following
10 quotes begins at Page 25, Star 25 of the opinion. "In the
11 end, this settlement was the bargain struck by the parties
12 negotiating amid the fog of litigation. If we were drawing up
13 a settlement ourselves, we may want different terms or more
14 compensation for a certain condition. But our role as judges
15 is to review the settlement reached by the parties for its
16 fairness, adequacy, and reasonableness. And when exercising
17 that role, we must 'guard against demanding too large a
18 settlement based on our view of the merits of the litigation;
19 after all, settlement is a compromise, a yielding of the
20 highest hopes in exchange for certainty and resolution.'"

21 Next, your Honor, settlement class certification.
22 This Court has on four separate occasions found that the
23 settlement class proposed here meets the requirements for
24 class certification. The law, of course, as your Honor knows,
25 the requirements for settlement classes are more lenient than

1 those for a litigation class. After all, that is the whole
2 purpose of a settlement to avoid some of those issues in terms
3 of litigating a class.

4 We've detailed at Pages 25 to 32 of our moving brief,
5 ECF Number 437-1, why those class requirement certifications
6 are met. And I would note that there have not been any
7 objections by anybody to the class -- settlement class being
8 certified.

9 So, unless the Court had additional, specific
10 questions, I think we're going to rest on our papers with
11 regards to the settlement class certification.

12 The notice we believe satisfied due process. Your
13 Honor found that the notice program that was in fact done here
14 satisfied due process. There have been no objections to the
15 notice program or the notice that was issued.

16 And again, I would -- unless the Court had any
17 specific questions it wanted addressed on the notice, we'd
18 rest on our papers and the pleadings from the claims
19 administrator on that issue.

20 The plan of allocation is the next issue I'd like to
21 address. At Page 34 of our moving brief and in our reply
22 brief, we set forth the standard that the Court is to utilize
23 when evaluating a plan of distribution.

24 Namely, that standard is that it be like the
25 settlement itself: fair, reasonable, and adequate. We believe

1 the plan here is just that. The distribution of the cash
2 portion of the settlement fund will be based on the --
3 essentially the interest rate that a -- and the principle that
4 exists with respect to a class members' lien.

5 So, somebody who has a \$100 lien at 18 percent
6 interest is likely going to get more than someone who has a
7 \$50 lien at 10 percent interest because the relative harm that
8 would have been inflicted on that person is greater. The
9 interest rate was greater and, therefore, they would be
10 entitled to a greater portion of the settlement proceeds.
11 That is essentially how the cash portion of the settlement is
12 distributed. It's meant to try and fairly estimate the
13 relative harm vis-à-vis the other class members that a
14 particular class member had and give them that portion, their
15 relative portion, or pro rata portion of the settlement
16 proceeds. Of course then, there's the issue of the discount
17 offers, that those who continue to have a lien outstanding
18 would be entitled to receive under various settlements.

19 We've cited the case in our papers, your Honor, about
20 how a court -- or how a settlement, a plan of distribution can
21 provide for different modes of compensation within a class
22 depending on the harm inflicted on certain people within the
23 class. There is no hard and fast rule, that everyone has to
24 be subject to the same distribution metric.

25 Plans of distribution or allocation can be tailored

1 to the specific needs of the case and can provide differing
2 levels of compensation to differing members of the class based
3 on the harm that was inflicted on them. And that's what we
4 tried to do here.

5 Those who will receive a discount offer, by
6 definition, still have a lien outstanding on their property.
7 That lien is still accruing interest. So, but through no
8 fault of their own, the people who have already paid their
9 lien have no more recurring interest. That lien has been
10 extinguished. And they did pay an artificially inflated
11 premium in terms of the interest rate on that lien, but unlike
12 those where a lien is still outstanding and interest continues
13 to accrue, they don't have the same issue that those who still
14 have a lien outstanding are subject to.

15 And I would note, there are some defendants that, you
16 know, for whatever reason, and I'm not in this business, just
17 have the motto that they don't want to foreclose on people,
18 they just want to keep paying the subsequent years taxes. So,
19 it could be that these people continue to in perpetuity have
20 this interest rate accrued.

21 And so, that is what we tried to do with the plan of
22 distribution, to help those people who are subject to
23 additional harm than those who have already paid their liens
24 are not.

25 There was an objection filed by -- at ECF 453 by a --

1 I think it's Ms. Jerilean Roberts to the plan of allocation.

2 Candidly, your Honor, it's not entirely clear
3 specifically what her concerns were. At best I can tell, her
4 question was whether the plan of allocation would take into
5 account subsequent interest for the life of the certificate.

6 And I think that's a quote directly from her pleading. I
7 think the answer -- if that is the question, I think the
8 answer is, No, that's not really what the plan of allocation
9 is intended to do.

10 The plan of allocation is simply intended to provide
11 a fair metric to distribute this pool of settlement proceeds to
12 people. And we thought the easiest way to administer that
13 would be simply to take the principal amount on the initial
14 lien that someone had on their property as well as the
15 interest rate; and when you start looking at -- and that
16 should proximate the relative harm that that person had
17 relative to other class members.

18 And so, I think the answer to her question is, No,
19 but that's certainly not really the method or the purpose of
20 the plan of distribution or the settlement proceeds.

21 I think, obviously, Mr. and Mrs. Davies have posed
22 some objections to the -- a single objection to the plan of
23 allocation. I think I've addressed it.

24 I would also note, for the record, your Honor, that
25 we've put in on our joint reply declaration in support -- in

1 further support of our motion for final approval,
2 certifications from each of the four named Plaintiffs who
3 attested to the fact they were apprised of these settlements
4 as they were being negotiated; that they were apprised of the
5 fact that there would be this differing level of relief for
6 class members based on whether or not their lien was still
7 outstanding; and each one of the named Plaintiffs attested to
8 the fact that they had no objection to that aspect of the
9 settlement.

10 Your Honor, I'd like now to go to the -- unless the
11 Court has any other questions with regards to fairness and
12 adequacy of the settlements, I'd like to address what I think
13 is a very important issue, which is, the Davies' lack of
14 standing to object to these settlements.

15 And it's an important issue because of the fact that
16 these settlements provide for relief to those who still have
17 liens outstanding. And we think that the Objectors shouldn't
18 even be here. And even after this, we hope that the Objectors
19 don't further delay these proceedings by continuing to advance
20 the objections that they're advancing.

21 And so, we're requesting that the Court specifically
22 rule on the Davies' lack of standing and strike their
23 objection for lack of standing. And the reason is, as we
24 detailed in our papers, they don't have a claim here.

25 If they filed a case in federal court on their own,

1 outside of this class action, they -- I don't even think the
2 Objectors can say that case could proceed. It would be
3 dismissed outright. And the reason is, they've already
4 compromised in its entirety their claim that they have in this
5 case.

6 Mr. and Mrs. Davies, for whatever reason, failed to
7 pay the property taxes on their property. A lien arose on
8 that property by operation of law. That lien happened to be
9 bought by one of the Defendants in our case, one of the SASS
10 Defendants. And after years of Mrs. Davies being unable to
11 pay her property taxes, in 2011, SASS filed a foreclosure case
12 in state court against Mrs. Davies to foreclose on her
13 property for failure to pay her property taxes based on a lien
14 the SASS Defendants acquired. There was nothing illegal about
15 that. Although, it's unfortunate, they had every right under
16 the law to file that foreclosure case.

17 In state court, Davies, who was the Defendant, since
18 it was foreclosure case, filed an answer and counterclaim and
19 defenses. And in that document -- and we've attached it to
20 our joint reply declaration, she asserted that her, as a
21 defense, her lien was subject to a bid-rigging conspiracy.

22 In addition, she filed a counterclaim in that
23 document, an affirmative claim against SASS. And in that
24 counterclaim, she asserted treble damages. She asserted the
25 bid-rigging conspiracy that is at issue in this class action.

1 She asserted that she was seeking attorney's fees. She
2 asserted the claim was brought under the New Jersey Code, the
3 New Jersey statute. And all of those things are consistent
4 with a State New Jersey antitrust claim: New Jersey Code,
5 treble damages, attorney's fees, declaratory relief.

6 Although, she didn't use the magic words "antitrust case," it
7 was a pro se pleading; she did the best she could, it was an
8 antitrust case. It was an antitrust claim that she brought.

9 The case went on for several years. She was able to
10 have counsel for about two out of those three years. Mr.
11 Perle, who is one of the plaintiff's counsel here. In fact,
12 when Mr. Perle came on, he was able to enjoin SASS from
13 proceeding in the foreclosure case while this case was
14 pending.

15 At some point in early 2014, with the Davies
16 continuing to try to press their claim, both in state court
17 and also in this case, SASS filed a motion, a motion to elect
18 her remedies. Simply that she couldn't -- she couldn't have
19 two bites at the apple. Either she proceeds on the
20 counterclaim on the bid-rigging conspiracy in state court or
21 she proceeds here in this case. But it's not fair to them to
22 subject them to double recovery and have her -- have the
23 opportunity to litigate on both fronts.

24 Judge Batten, in her state court case, issued an
25 order. His order said that she's required to file a written

1 election of her remedies, either proceed in state court on
2 this claim or proceed in this court before your Honor, but not
3 on both fronts. She never filed as far as we can tell that
4 written election, but she showed up on May 14 of 2014 and
5 tried the claim. She tried that counterclaim. She questioned
6 witnesses. She presented her son, Mr. Davies, as one of her
7 witnesses. She presented documents in evidence. And as Judge
8 Batten noted, although, unfortunate in the case -- and her
9 story is unfortunate. Unfortunately, she did not present any
10 evidence that the lien on her property, the lien for which she
11 is arguing she has standing here, that there was any damage;
12 that there was any conspiracy that existed in terms of SASS
13 acquiring that lien. She couldn't prove it.

14 He then dismissed that counterclaim and the defense
15 based on the bid-rigging conspiracy with prejudice.

16 Now, under the law that claim is gone. If they --
17 again, if they brought that claim here before your Honor
18 today, it would be dismissed under issue preclusion.

19 We cite a case in our papers, *Untracht v. West Jersey*
20 *Health Systems*, 803 F.Supp 978, from this district in 1992,
21 which has the identical facts. In that case a doctor brought
22 a state antitrust claim and other claims against a hospital
23 who had terminated him. Those claims ultimately were tried
24 and dismissed with prejudice. Thereafter, he filed a case in
25 federal court, here in this district, and brought a federal

1 antitrust claim because in the state court, he was unable to
2 bring that federal claim since the federal claim is
3 exclusively within the jurisdiction of this Court.

4 And the Court said, Although, it won't apply claim
5 preclusion to this plaintiff because he couldn't bring that
6 claim in state court because of exclusive jurisdiction, in
7 this court under issue preclusion that claim would be barred.
8 He's already litigated those issues in state court and those
9 issues he no longer is able to litigate those issues and
10 dismiss the federal antitrust claim with prejudice. It's
11 exactly on all fours with the situation here. They fully
12 compromised their claim, and they don't have standing under
13 issue preclusion to be part of the class.

14 We've cited cases where courts have not allowed
15 certain individuals to participate in class settlements where
16 they have previously compromised their claims. We've cited
17 those in our papers.

18 For example, *Burka v. NYC Transit Authority*, Page 4
19 of our reply brief. And so, we don't believe the Court should
20 permit this objection and should strike the objection on
21 standing grounds as their claim here is barred under issue
22 preclusion.

23 Now, Davies makes the argument that because after
24 Judge Batten issued his order dismissing with prejudice the
25 defenses and counterclaims in the state court proceeding and

1 then a third-party came in and paid off the lien of Davies
2 that there was never a final judgment and, therefore, issue
3 preclusion can't apply. That's not correct.

4 We cite in our papers, including in the *Untracht*
5 case, that the doctrine of issue preclusion and a judgement
6 on the merits is more pliant than requiring a formal written
7 judgment. If the issue was actually litigated and finally
8 determined, then that's enough for issue preclusion. You
9 don't need to have a formal written judgment entered. And
10 there's no question here -- again, and we put in the entire
11 transcript from her trial, that her claim was litigated and
12 lost.

13 In addition, your Honor, in addition to the issue
14 preclusion barring her claim, she also does not have standing
15 because she has not been aggrieved. She was adjudicated not
16 to have her lien subject to the conspiracy and, therefore, has
17 no damage.

18 They argue, Well, we do fall within the class
19 definition that exists in this case and that's all that's
20 required, that's simply incorrect. As we put in our reply
21 papers, you need more than just meeting the criteria of class
22 definition. If you don't have a compensable injury. And they
23 don't with regards to the claims in this case any longer, then
24 she's not a proper class member. You need more than just
25 meeting the class definition.

1 In addition -- and we cite the *Air Cargo* case, she
2 has not made a claim -- she has not filed a proof of claim in
3 this case. Under the law, she has no standing to be here. By
4 definition, if you're not going to participate in the
5 settlement, you shouldn't be allowed to complain about it.
6 And she has not filed a proof of claim. At least as of
7 Friday, a few days ago, she has still not filed a proof of
8 claim. The law is clear. If you don't file a proof of claim,
9 you can't be heard to complain about the settlements.

10 Finally, your Honor, it's not even clear that she has
11 or ever will have any damage in terms of paying, actually
12 paying an artificially inflated rate. As I said earlier,
13 after she lost her trial in state court, a third-party, the
14 Pennsylvania State Employees Credit Union came in and paid her
15 lien in its entirety with their own funds. It's quite
16 possible that they still have to pay the Pennsylvania, the
17 bank those funds. And in that sense maybe they would have
18 paid the artificially inflated rate, but they've put nothing
19 in the record that conclusively establishes that.

20 Furthermore, what was most troubling to us that they
21 tried to hide all of this from the Court. They didn't say
22 anything about any of this until we shown the light on them
23 and forced them to come forward. And it's no wonder because
24 these facts clearly establish their lack of standing.

25 They make other arguments in their objection. They

1 argue that the settlements cannot be fair because the named
2 Plaintiffs weren't kept apprised of the settlements and that
3 we kept people in the dark. Well, we've put in, again, I
4 refer to the certifications that we've put in from each of the
5 named Plaintiffs. I think we have two of them here today, Mr.
6 and Mrs. Schmidt, who said that the things that Davies are
7 saying are just not true; that we kept them informed of the
8 settlements; that they're generally pleased with the way the
9 litigation has progressed and that whatever Davies has said
10 that they said is simply not true. That's in our reply
11 declaration. We have certifications from each of the named
12 Plaintiffs.

13 So their argument that these settlements lack
14 fairness or reasonableness because the named Plaintiffs were
15 not informed, it's just simply wrong, and we've rebutted that
16 contention.

17 Next, your Honor, I'd like to move to our motion for
18 attorney's fees, expenses, and incentive payments to the named
19 Plaintiffs. As your Honor saw in the papers, we've made a fee
20 request of 30 percent or \$2,875,000. When we put in our
21 papers, we indicated that at that point, collectively,
22 plaintiff's counsel had put in about 7,109 hours of work on
23 the case and that amounted to total time of \$3.75 million. Of
24 course, since the time we filed our papers, we have since put
25 in additional work. And of course there will be additional

1 work going forward. As of now we put in additional work of
2 about \$150,000. So, just using the figures as of
3 January 31st, 2016, we were requesting only 75 percent of the
4 time that we put in in the case. In other words we're taking
5 a little bit of a hair cut, if you will, should the Court
6 award us the fees that we've requested. And of course that
7 hair cut will get even bigger as we go forward. I'm reluctant
8 to talk about hair cuts given my situation.

9 THE COURT: We all are, counsel.

10 MR. ZWEIG: I would note, your Honor, there has been
11 no objection to the fee request by anybody, including Mr. and
12 Mrs. Davies. And so we think it's a reasonable request under
13 the circumstances of this case, the amount of work that we've
14 put into the case. We are not seeking any fees on the
15 discounts that are being offered to the members of the class.
16 It's possible that those will -- we just don't know how well
17 received those will be because they haven't taken place yet.
18 And hopefully, they are well received and hopefully we can
19 provide some relief to those who could use it and try and get
20 the lien off of their property at a discount, but we just
21 don't know how that will work out and so we are limiting our
22 request just to the cash component of the settlement that
23 we've recovered.

24 We've asked the Court that we be permitted to
25 distribute those attorney's fees amongst plaintiff's counsel

1 based on the work that they've performed. We've put that in
2 the proposed order, if your Honor would allow us to do that.

3 On the reimbursement of our expenses, I would note
4 also no objection has been paid. They're very reasonable in
5 our view. We've requested reimbursement of \$83,000 and
6 change. The largest of those expenses were for a vendor lien
7 source which helped us put together some of the notice
8 database. That cost about \$40,000. Tax preparation fees are
9 another significant expense and an expense we're going to have
10 going forward. Those we've already spent \$17,000 in
11 accounting fees. I will say that we have tried to minimize
12 our expenses as much as we could. In fact, we've gotten some
13 of the Defendants to help cover the cost of the database from
14 lien source by contributing I think about \$30,000 towards that
15 which obviously we're not seeking in terms of reimbursement.
16 In addition, on the tax preparation fees, we've actually were
17 able to get the escrow agent to kick in some of that money to
18 help us defray the costs of the tax preparation fees. I think
19 the first year they gave us about three or \$4,000, and they're
20 going to give us another couple thousand dollars this year.
21 So, where we can, we certainly are trying to keep our costs
22 down and recover whatever costs we can. Of course, the
23 \$83,000 reimbursement request is not inclusive of whatever the
24 Court administrator fee -- the class notice and claim
25 administrator fees will be. At an appropriate time, we will

1 provide the Court with that information and get whatever
2 approvals or seek whatever approvals that we need to with
3 respect to paying the claims administrator.

4 Finally, your Honor, we've asked for \$3,500 in
5 incentive payments per named Plaintiff or a total of 14,000
6 for the four named Plaintiffs that we have. We detail at
7 Pages 34 through 36 of our moving brief, ECF 438-1, the legal
8 authority supporting our request. We note there has been no
9 opposition to that request, and we would note these awards are
10 modest relative to other awards that we discuss in our papers
11 which 10, 20, \$30,000. We think \$3,500 is a number that
12 fairly compensates the named Plaintiffs for their
13 participation, for their oversight of this case, and we would
14 request that the Court order and award the \$3,500 incentive
15 payments for each of the named Plaintiffs.

16 With that, your Honor, unless the Court has any
17 questions, I'm going to step aside. Thank you, your Honor.

18 THE COURT: Thank you very much, Mr. Zweig.

19 It's the Court's understanding that only two
20 individuals, Ms. Arlene Davies and Ms. Jerilean Roberts, have
21 filed objections to the settlement. In addition, Ms.
22 Christine Sweeney has a statement regarding the underlying
23 action that she would like to present.

24 As to the initial matter, the Court recognizes that
25 there is a dispute as to whether Ms. Davies has standing to

1 object to the settlement.

2 For the purpose of this hearing, the Court will
3 reserve on a decision on the issue of Ms. Davies' standing
4 and will hear all objections.

5 Counsel, at this time, I guess let me say this, in
6 addressing the standing issue, I'm going to put that aside.

7 With respect to anyone else that is here to voice an
8 objection to the settlement and wishes to approach, just rise
9 and the Court will acknowledge as to whether or not you could
10 be heard.

11 Is there anyone else in the Court who wishes to be
12 heard? Please stand and state your name.

13 MR. DAVIES: My name is Robert Davies, your Honor.
14 Respectfully, I am Arlene's son. And I've been referred to as
15 Mr. Davies --

16 THE COURT: As Mr. and Mrs.

17 MR. DAVIES: It's my dad and mom's place. And I just
18 very simply want to say that what was said by my mother and
19 submitted is true. And there was only -- there was a number
20 of issues that regarding the date and damages that are readily
21 available on the public record. I'm not going to frankly
22 dignify some of the insults that have been hurled in class
23 counsel's submissions before the Court. But my mother was
24 represented by class counsel who has submitted a \$300,000 bill
25 as part of their case. When she asks questions about where is

1 the data? Where is the economics? They dropped her as a lead
2 plaintiff. And she was okay to be a lead plaintiff and her
3 standing was fine when it suited class counsel's purpose. And
4 she was let go and left to defend herself, an 89-year old
5 woman, two days, only two days before Vinay Jisani, SASS's
6 executive vice president pled guilty. There has been no
7 discovery in this case. That's all I have, your Honor.

8 THE COURT: Thank you. At this time, for those who
9 wanted to be heard, I'll hear from you. I don't care the
10 order. Ms. Sweeney. You can speak from the podium.

11 MS. SWEENEY: Your Honor and fellow settlement Class
12 Plaintiffs, my name is Christine Sweeney. My now deceased
13 husband, William Sweeney, and I owned properties at 666, 668,
14 672, 674 and 678 South Broad Street, Trenton. These
15 properties comprise a restaurant, a bar, seven apartments, a
16 warehouse, a potential retail space and a parking lot.

17 We purchased the properties on March 21st, 1980 under
18 JFD Incorporated. On May 11, 2011, these properties were
19 sold. When Bill died on September 22, 2009, we had owned
20 these properties for almost 30 years. Our pride and joy was
21 our restaurant Sweeney Saloon. It was a popular Irish pub
22 dedicated to upholding Irish American culture with weekly
23 entertainment. We featured well-known east coast Irish bands
24 and singers which our customer base enthusiastically
25 supported. We always remained at the same address throughout

1 the decades, building a quality reputation as a local venue.
2 When we purchased the property in 1980, it was 101 years old.
3 It was a strong link to the City of Trenton's history. We
4 continued its proud standing by financially contributing to
5 the city's economy in providing revenue to our restaurant and
6 bar and affordable housing for our residences. Bill managed
7 our business single handedly. As a landlord, he oversaw
8 apartment rentals and their upkeep. He also handled
9 operations at every level from hiring employees, to ordering
10 supplies, to helping man the bar, preparing every meal for our
11 lunch and dinner customers. His prime responsibility was
12 managing all financial aspects of the business.

13 I always maintained a separate career and did not
14 actively participate in the business's financial aspects. In
15 this way I was able to provide for our personal finances with
16 our health insurance.

17 Following Bill's death, I discovered documents that
18 revealed our business began having financial problems
19 beginning in 1994. Taxes were not paid on time that resulted
20 in liens. Several Defendants named in this class action
21 settlement lawsuit purchased these liens. They were Crusader
22 Lien Services, Robert A. DelVecchio and Mooring Tax Asset
23 Group, LLC. This brings me to the reason why I'm standing
24 here before you.

25 On September 22, 2009, my husband committed suicide

1 because of the unending struggle with the business over deeply
2 financial issues. Bill went missing on the afternoon of
3 September 22nd. The Hamilton Township Police found his body
4 the next day. The medical cause of death was insulin
5 poisoning. Along with two bottles of his oral diabetes
6 medication, Bill injected more than 10 syringes of insulin
7 into his body. This was not a lone act of suicide. I believe
8 Bill had an accomplice sitting aside him in the front seat of
9 the car. That accomplice just as surely pulled the plunger on
10 each syringe just as Bill did causing his death. I believe
11 that accomplice is Mooring Tax Asset Group.

12 Although, Bill's actual death occurred on
13 September 22, 2009, the cause of his death started years
14 earlier when Mooring's representatives began their repeated
15 and continuous harassment and threats of foreclosure if we
16 didn't pay an initial 1,000, and then 2,000 monthly, in
17 addition to paying the original lien of \$150,000.

18 I just recently found a document from Mooring billing
19 our business these amounts. These were not to pay down
20 Mooring's lien but rather to pay Mooring so that, and I quote,
21 we could keep the business. Bill signed these agreements just
22 three months before he died. The documents stated that many
23 telephone conversations and in-person visits occurred between
24 Bill and Mooring. A couple weeks prior to September 22nd, the
25 day Bill died, we put the business up for sale. Marlex Home

1 Improvement, Mario Ornandez offered to buy it. When Bill did
2 not return home on September 23rd, I called our realtor, Ann
3 LeBate. I said, I would accept the offer on Bill's behalf. I
4 told Ann that if Bill was that tormented over the business, I
5 didn't want him to suffer any more.

6 Then Ann said something that makes my stomach churn
7 to this day. She told me that Bill was going to kill himself.
8 She learned the shocking news directly from numerous
9 individuals associated with the liens and the sale of the
10 property. But no one, not a single person, relayed that
11 information to me or anyone who could have stopped or would
12 have stopped Bill from ending his life. After reading the
13 online Q and A for this class action settlement, I realized
14 that these Defendants compounded the harassments and threats
15 with the legal transactions and maneuvering in these public
16 sale auctions by inflating the interest rates imposed on the
17 property owners. I think the increased costs to satisfy these
18 liens were not only unjustly imposed, but also created
19 unbearable stress and hardship for property owners. And in
20 our case, led to my husband's death.

21 My point, these companies purchased the liens knowing
22 that the property owners did not have the money to pay them.
23 My husband did not have to die. Bill lived with depression
24 every minute of every day because he knew he could never repay
25 the liens, plus the additional monies owed and that were

1 inflated by the high interest rates owed on them. I have so
2 many questions. Beginning why were these companies allowed to
3 manage these illegal transactions without the State of New
4 Jersey or the courts doing some kind of monitoring? Here's
5 another question. Is a person's life worth less than a
6 building? A piece of land? A home? A business? I am sure
7 that my husband was not the only victim who may have committed
8 suicide over these threatening liens. The remaining family
9 members, like me, are left to struggle to make sense of the
10 Defendants' atrocious illegal transactions. It has been six
11 years, seven months and three days since Bill's death. Since
12 then, my life is like living in a big black hole, week after
13 week, month after month, year after year. I go through the
14 motions. I breathe, but I don't live. I just exist. I miss
15 Bill so much that it hurts me beyond hurt. My dreams of
16 growing old with my one true love are shattered. After 41
17 years of marriage, when he took his life, he took mine too. I
18 believe that Robert DelVecchio and Mooring Tax Asset Group
19 killed my husband with their illegal tactics, harassments, and
20 threats of foreclosure. It was just as they pulled each
21 plunger gushing insulin through his veins, killing him. My
22 husband was a good, decent person and did not deserve to die
23 over a piece of property.

24 In closing today, I came here to tell you about the
25 heartless tactics used by some of the named Defendants in this

1 antitrust litigation. There is no denying the taxes should
2 have been paid, but Bill did not have the money to pay them.
3 The continual threats and harassments by these lienholders
4 didn't help pay them. It only reenforced Bill's depression,
5 in committing him to escape from these greedy lienholders. I
6 am seeking changes in the monitoring of these tax sale
7 auctions and the methods that are used by the Defendants
8 against the property owners. Absolutely no one, no one,
9 should have to kill themselves over some bricks and concrete,
10 no one. Thank you.

11 THE COURT: Thank you, Ms. Sweeney.

12 Who's next? Who wants to be heard on the Objectors'
13 side? Anyone else? Okay, Counsel.

14 MR. WIEGAND: Good morning, your Honor. You do not
15 have the information that you need.

16 THE COURT: State your name for the record and for
17 the court reporter.

18 MR. WIEGAND: I apologize. Tom Wiegand of MoloLamken
19 on behalf of the Objector Arlene Davies.

20 If it please the Court, you do not have the
21 information you need, your Honor, to assess the proposed
22 settlement. And what information you do have tells us that
23 the settlement is not adequate.

24 I'm here on behalf of Arlene Davies. Ms. Davies is
25 seated in the courtroom here. I am also here, your Honor, to

1 speak on behalf of all absent class members who are similarly
2 situated on whose behalf you have a fiduciary duty to make
3 sure that this settlement is fair, reasonable, and adequate.

4 Your Honor, you have no information as to the class
5 size. You have no information as to the specific dollar value
6 of the liens that were purchased during the class period by
7 these Defendants. We do not know what is the interest that
8 was earned from the illegally obtained liens. We do not know
9 what profits these Defendants took through their conspiracy as
10 would be shown in their profit and loss statements.

11 Further, your Honor, there's the question of the
12 second separate payment to certain class members who have
13 outstanding liens. Certainly that is easily obtained and
14 known information. We do not know how many outstanding liens
15 are subject to this 15 percent redemption. We just don't know
16 how many. We don't know of the value. We have no idea how
17 much that money potentially is. It might be a small fraction
18 of the nine and a half million dollar settlement amount. It
19 might be five times the nine and a half million dollar
20 settlement amount. We have no idea. You have no idea.

21 So, your Honor, what I was left to do was to look at
22 the Class Plaintiffs own allegations which counsel recounted
23 accurately, which is that it's \$200 million purchased in tax
24 liens each year. We made an assumption based on some market
25 evidence that a year of interest might be about right, but

1 we're guessing. We don't know. They know the exact number
2 how many years each of these liens was outstanding, whether
3 larger liens were outstanding longer, we just don't know. But
4 if you assume the 18 percent that they allege in the first
5 amended complaint for a year, then that's 18 percent of
6 \$200 million every year, that's \$36 million for an 11-year
7 class conspiracy, that's \$400 million. The math is
8 undeniable. They haven't given you no evidence countered to
9 that.

10 Counsel did argue, I quote, numerous liens sold at
11 less than 18 percent. I don't know if that's 100. I don't
12 know if that's 100,000. I have no idea. You have no idea.

13 So, on the *Girsh* factor of looking at what's the best
14 scenario of this case, it's a \$400 million case. Depending on
15 the evidence -- and here we've got 15 guilty pleas. It could
16 be trebled. That's \$1.2 billion. But we're looking at nine
17 and a half million dollars. Now, your Honor, we could be
18 looking at \$95 million. We could be looking at \$950,000. You
19 could take a zero added or take a zero off, you still don't
20 have the information you need to assess whether or not this
21 settlement is fair, reasonable, and adequate. It is simply
22 absent.

23 At the preliminary fairness hearing we were told that
24 information would be submitted. It would have to be
25 submitted. And your Honor approved the preliminary -- you

1 approved the settlement preliminarily because that issue needs
2 to be addressed at the final fairness hearing. But it has not
3 been addressed.

4 Now, your Honor, what counsel also said and put in
5 their papers is that they have been bid books. Now again, as
6 you pointed out, no one has been provided those bid books.
7 Neither you, nor Objectors, nor anybody else who might assess
8 them. What I want to point out is that in their joint
9 declaration they make the point that they received those bid
10 books prior to filing their first amended complaint.

11 Paragraph 89 of the joint declaration submitted in
12 support of their final fairness submission in mid February of
13 this year states that they received the bid books.

14 Then in Paragraph 92, they state that based on the
15 information that they had accumulated to that time, which
16 included the bid books, they filed a first amended complaint.
17 Their first amended complaint is what we Objectors have relied
18 upon in assessing the value of this case.

19 Your Honor, the first amended complaint is also what
20 you relied upon when ruling in response to the motion to
21 dismiss that the Plaintiffs have established, quote, the
22 overarching statewide conspiracy. Plaintiffs' factual detail
23 in their first amended complaint that they've submitted
24 consistent with their duties before the Court and their
25 ethical obligations supported a statewide conspiracy of

1 \$200 million per year. This is after the bid books. So the
2 only evidence that we have is that the bid books actually
3 support the valuation of this case at \$400 million.

4 Now, your Honor, Plaintiffs have offered two other
5 justifications for the settlement. First, let me address the
6 criminal fines. They point out that \$2,055,000 has been
7 assessed in criminal fines.

8 First, your Honor, these are fines. These are not
9 damages estimates. In fact, the papers that they submit
10 expressly say so. The papers state that because there is
11 civil proceedings, it is presumed that any recoveries for
12 damage amounts would be gathered there. And, for example,
13 your Honor, Docket 439, Exhibit 10, Paragraph 12, as to one of
14 the defendants in this case.

15 Further, your Honor, if you look at the \$2,055,000
16 that is in the chart, in their filing, it shows that most of
17 the Defendants' criminal fines have not yet been determined.

18 In fact, the Crestar Defendants' criminal fine was
19 \$2 million which exceeds the settlement in the civil case of
20 \$1.65 million.

21 The SASS Defendants, who have settled, agreed to pay
22 \$3.4 million in settling this case. Their criminal fine has
23 not been determined. So even if a criminal fine were somehow
24 representative or an indicator of civil damages, the
25 \$2,055,000 is very misleading.

1 Indeed, your Honor, the SASS Defendants, we know
2 themselves purchased between 75 and \$100 million of the
3 \$200 million market every year. That is shown from the
4 criminal trial that occurred last year, and it is submitted to
5 this Court on Docket 423 on Page 2.

6 The second justification that has been offered, your
7 Honor, was the NFL decision issued by the Third Circuit just a
8 week ago. Your Honor, the NFL case is very different. What
9 the Class Plaintiffs have presented here is not close.

10 There, your Honor, Judge Brody was presented with no
11 evidence justifying a settlement value. Now, there is a
12 settlement value of \$765 million at the time. Very, very
13 different than the \$9.5 million in this case. And yet, Judge
14 Brody *sua sponte* refused even a preliminary approval of that
15 settlement amount because it was not supported with data. She
16 couldn't determine whether it would be fair, reasonable, and
17 adequate. She knew it by looking at the attachments and, she
18 said, Can't do it. Dismissed it without prejudice.

19 Your Honor, that motion that she dismissed *sua*
20 *sponte*, without prejudice, was supported by an affidavit from
21 a former federal district court judge who had in good faith
22 attended months of mediations. He had been the mediator. He
23 was appointed by the court. He said that he believed that the
24 negotiations occurred in good faith; that counsel on all sides
25 represented themselves well; that they fought hard and this

1 was a fair settlement in terms of the process that resulted in
2 it.

3 Your Honor, that's much more evidence than you've
4 been given. You've been given essentially the same type
5 statements, but by counsel who are involved in the matter.
6 You do not have the statements of a federal district court
7 judge who sat through them. And yet, of course, Judge Brody
8 realized even that was not sufficient; you need actual data.

9 So what happened in the NFL case is that Judge Brody
10 asked for actuarial data. She received over 600 pages of
11 actuarial data. We knew the number of people who were
12 involved in that case. We knew what diseases. How many
13 people would get them. What those would cost, et cetera.
14 There was detailed evidence provided.

15 As the Third Circuit also realized there are medical
16 affidavits. Judge Brody had and relied on 22 expert
17 affidavits from doctors. There was on certain issues much
18 information and evidence provided to Judge Brody. And before
19 she had it, she was not going to accept that settlement.

20 Even after the final fairness hearing, your Honor,
21 Judge Brody realized, among other problems with the
22 settlement, that there is a group that was disenfranchised:
23 the NFL Europe players. They were getting a full release, but
24 they were getting no compensation. She realized that was not
25 fair. You had a subset of the class getting something

1 different than the rest of the class received. And she asked
2 before making a determination on the final fairness whether
3 the settling parties would agree to include NFL Europe, among
4 other issues that she found particular problems with, and only
5 after they agreed to do that, did Judge Brody approve the
6 settlement in that case.

7 Your Honor, the NFL case is very, very different. We
8 have no data here. We have self-serving claims from counsel,
9 which we know from the *GM Trucks* decision, a court cannot rely
10 on. We know that anyway, but if we needed precedent, the
11 Third Circuit has said it.

12 Your Honor, briefly assessing other *Girsh* factors,
13 the Plaintiffs have failed to account for the fact that there
14 are criminal pleas. What they have said is, Well, criminal
15 pleas does not make it a slam dunk. But they have not
16 incorporated the fact that the criminal pleas are going to
17 make the civil case significantly different than the cases
18 that they cite. A criminal plea is going to make a big
19 difference in cross-examining certain witnesses. It is going
20 to make a difference in how the jury is going to see the
21 damage estimates. The cases they rely on are not cases in
22 which criminal pleas have been filed. Indeed, the criminal
23 pleas make a higher chance of prevailing at trial. These are
24 all factors that point in certain directions that criminal
25 pleas weigh against the settlement.

1 Your Honor, the lack of discovery and lack of any
2 evidence from the informal discovery should make this Court
3 weary. Perhaps, the NFL decision from the Third Circuit is,
4 while it refuses to adopt a distinction between formal and
5 informal, perhaps, if that's what Plaintiffs are arguing, the
6 point that the NFL court made was that much evidence had been
7 submitted to the Court. Here, even if some informal discovery
8 occurred, we have no idea what it is. It has not been shown
9 to anyone. If it was helpful to the cause, one would expect
10 we would have seen it. It has been hidden. There is no
11 evidence as to what a reasonable settlement is here. None.

12 Your Honor, on the interclass conflict. So all class
13 members get a pro rata share, everybody. If you got a current
14 outstanding lien or not. But, if you have a current
15 outstanding lien, you also get a second settlement payment.
16 That in itself is unfair, nor is it a reflection of some
17 people deserve it more than others. If somebody had -- we'll
18 use the example \$100 tax lien at 18 percent and they redeemed
19 it two years ago, they only get the pro rata share, even
20 though they might have spent 10 or 12 years of paying
21 18 percent on that tax lien. Whereas, someone who still has
22 that tax lien, if they didn't redeem it two years ago, well,
23 now they get 15 percent of the entire amount which we're not
24 allowed to do the calculation, but it sounds like many, many
25 times what a pro rata share is going to be. It's 15 percent

1 of the actual tax paid. It's 15 percent of the interest that
2 is accumulated. It is 15 percent of the entire amount owing.
3 That is a much larger settlement. Again, it defies
4 calculation because we have no data from which to calculate
5 it. But to suggest that one portion of the class gets a
6 second payment that nobody else gets is not fair.

7 You had yourself asked at the preliminary fairness
8 hearing. Well, couldn't we just lump those together and give
9 everybody a pro rata sheet? You could look at how long each
10 person had to pay interest on their initial liens. Some
11 people paid two months; some people paid six years; some
12 people still have the lien outstanding. You can simply make
13 it pro rata according to those payments. There is a way to do
14 it. And we had simply find out what is the current
15 outstanding value of all the liens, multiply that by
16 15 percent, add that to the settlement amount, and divvy it
17 up. That might resolve that. But what we have now, we know
18 does not work. There is a clear interclass conflict.

19 Your Honor, I'll touch briefly on the standing issue.
20 We've made it very clear in the letter that we submitted to
21 the Court, the main point here is that Ms. Davies is a member
22 of the class as defined. If they believe they have a defense
23 as to her claim, they believe they have defenses as to all the
24 claims. They think they have reasons why they should prevail
25 on all these claims. What they're doing with a class

1 settlement is buying their piece and getting a release.

2 The only thing Ms. Davies needs to do to establish
3 her standing has been done, which is to submit evidence that
4 she purchased a tax lien from one of the Defendants during the
5 class period. In fact, her tax lien was purchased at
6 18 percent at public auction in December of 2008.

7 Now, as to whether she has elected not to participate
8 in this case, through the state court case, we know that is
9 not true. What the state court judge there issued, and has
10 ordered, was a statement that unless she files a letter
11 stating that she wished to pursue her claims against SASS in
12 the state court case, she would be deemed to have chosen to
13 pursue those through the federal case. That's this federal
14 case, your Honor. It is undisputed that there never was any
15 written election by Ms. Davies to pursue those claims in the
16 state court case. Then a hearing came up one day and Ms.
17 Davies attended. She had no lawyer with her.

18 The judge asked her if she was ready to proceed? She
19 said, No. She had no lawyer. That's not electing to proceed
20 in the state court case.

21 The Court expressly asked, Have you submitted a
22 written statement electing to pursue your claims in this case?
23 She said, No, she has not. By the Court's own order she is
24 deemed to pursue those claims here. Nevertheless, when she
25 said she did not want to proceed, she was asked, Well, tell me

1 about those claims? Well, she did.

2 Now, counsel is arguing that because that happened to
3 Ms. Davies that she has elected to pursue her claims in that
4 case, it's not true. She never made that election.

5 Further, your Honor, there was no class in this case
6 that have been certified so there's nothing to opt out from.
7 She cannot be deemed to have opted out from this class.

8 Your Honor, there is no claim preclusion. That's the
9 point of the *Nanavati* case. And from the reply of class
10 counsel I believe they are no longer arguing the claim
11 preclusion applies. They seemed to have agreed with that.
12 The remaining argument that they have is that they believe
13 issue preclusion should apply despite what I have just said
14 about the state court judge and Ms. Davies not having ever
15 submitted a written election pursuing the state court case.

16 Your Honor, there is no issue preclusion. The
17 *Untracht* case that's been cited to you talks about a final
18 determination that did rely on the earlier hearing regarding
19 antitrust claims. In this case, it's undisputed that the
20 final judgment in the state court case was that it was
21 dismissed because the tax liens had been redeemed. That was
22 it. That was the basis of the final determination.

23 The determination at the May 14th hearing, which was
24 determined because they didn't -- Ms. Davies did not have all
25 the documents. The Court was impressed with some of the

1 documents and some of the information that she had, but SASS
2 had a lawyer there and he was able to have certain objections
3 sustained so not much evidence came in. At the end of that
4 hearing, your Honor, the state court judge told Ms. Davies, I
5 encourage you to get a lawyer. You can come and ask for this
6 to be reconsidered. You have other rights. You could appeal.
7 And by the way, you have at least two months until this will
8 be docketed anyway, so you have time to get a lawyer. I
9 encourage you to do that. This is not a final determination.
10 And less than two months after that, your Honor, is when the
11 final determination issued based on the redemption, not based
12 on any hearing regarding Ms. Davies. Based solely on the
13 redemption.

14 The law, your Honor, is that the final determination,
15 the final order in the case needs to have followed on the
16 hearing that they were trying to apply if issue preclusion is
17 going to apply. The May 14th hearing needs to have been,
18 quote, essential to the final adjudication. It wasn't. It
19 was irrelevant to the final adjudication.

20 Further, your Honor, we have submitted evidence. It
21 is in the record. Ms. Davies does owe the money to the Credit
22 Union. There is a credit union that had her mortgage lien.
23 And so the Credit Union, rather than have the property
24 foreclosed upon, also acquired the lien from SASS. And it was
25 that redemption that ended the case. But without a doubt as

1 to the issue of damages, Ms. Davies still owes that entire
2 amount that had to be paid to SASS in order to avoid the
3 foreclosure.

4 Your Honor, if you have no questions. Thank you.

5 THE COURT: There is no objections to the fees and
6 costs, correct?

7 MR. WIEGAND: That's correct, we have no objections.

8 THE COURT: Anything on reply, Counsel?

9 MR. ZWEIG: Thank you, your Honor.

10 Jason Zweig, again, for the Class Plaintiffs. I'll
11 try to keep it relatively brief.

12 First, to address something that Mr. Davies had said
13 which was incorrect, he said that she was dropped as a named
14 plaintiff because she had asked for some data. That's just
15 not correct. We've put in our reply declaration the extensive
16 history of communications between Class Counsel and Mr. and
17 Mrs. Davies including the numerous telephone conversations in
18 which we provided them with information and the strengths and
19 weaknesses of the case, the reason why she was not included as
20 a named plaintiff, as we put, again, extensively in our joint
21 reply declaration is that, we said, if you disagree with
22 everything that we're doing, which she did, and he did, Mr.
23 Davies, then we didn't think it made a lot of sense for you to
24 continue as a named plaintiff. So that was -- that was the
25 reason why they were not a named plaintiff in the amended

1 complaint, not because she had asked for the data.

2 With regards to Ms. Sweeney's comments, obviously,
3 it's a tragic story. I've heard from a number of class
4 members throughout our time in this case who also have
5 difficult stories. This is, in my view, a very tough
6 situation, the tax lien business. You're dealing with real
7 people and homes; and it's tough. And again, I've heard
8 numerous conversations from a number of class members over the
9 years. But unfortunately, the situation is that the law is
10 what it is at the moment. And the law is in the State of New
11 Jersey, on the books in New Jersey, that investors can come
12 and purchase these tax liens regardless of the property
13 owners' circumstance. And so, as tragic as these stories are,
14 and they are, make no mistake about it, that's an issue that
15 needs to be addressed with the New Jersey Legislature, not
16 this case. This case is about the rigging of interest rates.
17 And so I urge Ms. Sweeney especially to -- and we'd be happy
18 to assist her, to talk to the New Jersey Legislature of
19 whether any adjustments to the laws can be made that might
20 assist property owners more than currently exist today.

21 With regards to some of the things Mr. Wiegand said.
22 He said, we don't know how much liens are at issue in this
23 case. As I said, in my remarks, and as we put in our
24 declaration, in fact, I'm going to grab it if -- your Honor.

25 THE COURT: Sure.

1 MR. ZWEIG: As I said in my opening remarks, your
2 Honor, in our joint declaration, which is ECF Number 439, we
3 include a number of cases the amount of liens that were the
4 subject of the conspiracy based on the criminal pleadings that
5 were -- that arrived in the public domain. And if you look at
6 Paragraph 28, we talk about the Mercer Defendants, in the
7 Mercer criminal plea documents. There is a stipulation that
8 there was \$211,000 worth of liens that were the subject of the
9 conspiracy that the Mercer Defendants conspired on. That's
10 the entire value of the lien with interest. We got from the
11 Mercer Defendants \$250,000. Our settlement relates only to
12 interest.

13 With regards to Remick, Paragraph 30, it talks about
14 how there were \$330,000 worth of liens that Remick conspired
15 on during the class period. I think our settlement with
16 Remick was \$130,000.

17 Mastellone, Paragraph 32, of our joint declaration,
18 there was \$166,000 of liens that he conspired on during the
19 class period. We got, I believe it's \$125,000 from Mr.
20 Mastellone. He's the gentleman that had to take out a home
21 equity line of credit to pay the settlement that he agreed to.

22 Mr. DelVecchio, Paragraph 34, there is \$320,000 worth
23 of liens that he conspired on. We got I believe it's 135,000
24 from him.

25 So, the contention and the notion that there's no

1 data in the record is just simply false. No matter how many
2 times Mr. Wiegand says it, isn't going to make it true.

3 Mr. Wiegand said that the bid books we had in our
4 possession prior to filing our amended complaint and,
5 therefore -- and we still allege there was 100 to 200 million
6 in liens sold every year and, therefore, that must be all a
7 part of the conspiracy. But the complaint says what it says.
8 It says that this is a 100 to \$200 million a year of tax liens
9 auctioned off every year. It doesn't say all of those were
10 conspired on. You're not going to find that anywhere in the
11 complaint. We never make that allegation. We never make the
12 allegation that the entirety of the interest rate is the
13 subject of the conspiracy on every single lien. That doesn't
14 exist anywhere in the complaint because we didn't allege that.

15 So, the fact that we had the bid books prior to
16 filing -- preparing and filing our amended complaint doesn't
17 change anything.

18 Mr. Wiegand misspoke on a number of occasions. He
19 said the SASS Defendants were -- you know, pled guilty and
20 that they're likely to, I don't recall exactly what he said,
21 but that they hadn't pled guilty and been sentenced yet.
22 That's a misstatement. The SASS Corporate defendants have not
23 been criminally charged and will not be criminally charged as
24 the investigation is over. There have been two employees of
25 SASS who were, who have pled guilty, Mr. Jessani and Mr.

1 Hruby. They haven't been sentenced yet. I don't know what
2 their fines will be or their sentence will be, but the SASS
3 defendants have not been charged and will not be charged.

4 Furthermore, the notion that the criminal fines are
5 irrelevant here is also not true. As your Honor may know
6 under the Mandatory Victim Restitution Act, 18 U.S.C. 3663,
7 the Court is obligated to impose restitution upon defendants
8 if damage to a victim can be determined. I, of course, talked
9 to you about the case, *U.S. v. Bathon*, where it could not be
10 determined. And it would be a difficult task here as well.

11 It's interesting how Mr. Wiegand, who was one of the
12 Objectors counsel in the NFL case, talks about all of the
13 discovery that -- or the documents that the Court had before
14 it to evaluate the settlement. In fact, despite all of the
15 stuff that it had before it, it still wasn't enough for Mr.
16 Wiegand. He still continued to say, there wasn't enough
17 discovery. And that's going to continue to be the case here
18 no matter how much is in the record in terms of this case.

19 In terms of the *Girsh* factor about the information
20 that Class Counsel had before it, it's not a matter a
21 formulaic answer in terms of how much discovery is necessary.
22 The touchstone of that factor is, did Class Counsel have
23 enough before it, as I said earlier, to properly evaluate the
24 strengths and weakness of the case. Not only did we have all
25 of the information, I've already talked about in the public

1 record. As I said earlier, the Defendants produced to us
2 financial information and information about the liens that
3 they conspired on and also that they didn't conspire on. And
4 we also went through, as your Honor knows, as probably still
5 hopefully is moved on from it, but there was a lot of paper
6 exchange between the parties on the motions to dismiss. We
7 had two rounds of motions to dismiss. We had dozens and
8 dozens of conversations with settling Defendants. We had a
9 full appreciation of the strengths and weaknesses of our case.
10 All three firms acting as Class Counsel have collectively,
11 among them, hundreds of years of experience in litigating
12 antitrust cases, that's not to say that therefore whatever we
13 say goes. But needless to say, based on the information we
14 had against the backdrop of our experience, we fully believed
15 we understood the strengths and weaknesses of this case and
16 believed that the settlements we achieved are, in fact, more
17 than fair, reasonable, and adequate.

18 Mr. Wiegand also misrepresented the state court
19 record with regards to Mrs. Davies and her trial. As we said,
20 it is true that she did not make a written election in terms
21 of Judge Batten's order requiring her to make a written
22 election of her remedies but she did show up at trial. She
23 never said she didn't want to go forward. And I don't need to
24 belabor the point. As I said we put in the full transcript.
25 And the Court has it in the record. And I will tell the Court

1 where to find it. I apologize, your Honor. I should have had
2 it handy.

3 The full transcript can be found at ECF 460-2
4 beginning at Page 59 of 200. But if you look on Pages 4 to 6,
5 at the beginning of the proceedings, the judge talks to Mrs.
6 Davies about whether she wants to go forward with the case and
7 at no time did she ever say, No. Again, that's in the record.

8 I will say also that Judge Batten ordered her to
9 retain new counsel. She consulted with Objector's counsel.
10 For whatever reason the Objector's counsel decided not to
11 represent her in that case and left her to fend for herself.
12 And she ultimately did not, for whatever reason, choose to
13 retain new counsel in that case.

14 Your Honor, I've been handed a note that says, with
15 regards to my representation about MD SASS, while it is true
16 that they have not been charged, I suspect this is probably
17 from Mr. Hughes, that it cannot be represented that they know
18 the state of the investigation and whether or not they will be
19 charged in the future. Certainly, based on my conversations
20 with people that are in the know and based on the statute of
21 limitations and other things, we think it's a very good
22 possibility that they will not be charged. I can certainly
23 say that.

24 Finally, your Honor, the issue about Mrs. Davies'
25 lien having been paid by a third-party. Mr. Wiegand said that

1 they put in the record that there is no question that she
2 ultimately owes those funds. We don't agree with that. Your
3 Honor can look at the letter that they put in. The only thing
4 they put in on that, again, after we've brought all this to
5 light, I'm not sure why they concealed all this information
6 from the parties, but it doesn't -- it's very vague as to
7 whether or not they need to pay the whole amount. And because
8 it's vague, it's not clear whether they ever will have to pay
9 the full amount and, therefore, standing is too attenuated.
10 We don't know if they ever will suffer the damage. And so,
11 again, another reason that they lack standing.

12 Your Honor, I think with that, I'd like, unless the
13 Court has any further questions, I'm done with my remarks,
14 thank you.

15 THE COURT: Thank you so much, Mr. Zweig.

16 Counsel, at this time the Court would like to thank
17 all of you as well as those Objectors who individually
18 spoke --

19 MR. WIEGAND: Your Honor, can I say one more thing?

20 THE COURT: Counsel, they get the last word. Is it
21 going to be in opposition of something that was just raised or
22 is it something new?

23 MR. WIEGAND: Absolutely. It will be very brief.

24 Thank you.

25 Your Honor, just as one example of the lack of

1 understanding as to the size of the conspiracy, if you look at
2 Paragraph 36 of the joint declaration, this is Mr. Jessani's
3 plea agreement. Mr. Jessani is a senior executive of MD SASS,
4 the company that we've been talking about, the company that
5 paid the \$3.4 million in settlement. And Paragraph 36 states
6 that, according to Jessani's plea agreement, the volume of
7 liens that Jessani conspired on was more than \$10 million. We
8 have no idea how much more. What was adduced at the criminal
9 trial and that we put into the record, I already gave the
10 cite, was that 75 to \$100 million per year was purchased by MD
11 SASS. Mr. Jessani on behalf of MD SASS would have been the
12 primary person doing that. It was well more than \$10 million
13 apparently.

14 And then your Honor, as to the fact that that amount
15 is not an estimation of actual damages, I refer the Court
16 again to Exhibit 10 to that declaration, Docket 439,
17 Exhibit 10, Paragraph 12, in which it states, That this is not
18 meant to be a recovery of actual damages. Thank you, your
19 Honor.

20 THE COURT: With that, Counsel, the Court will take
21 arguments as well as the papers submitted under advisement and
22 issue a decision.

23 I don't believe there is a need to do any
24 supplemental memoranda or anything additional. Am I correct,
25 Counsel? There's nothing raised today that we need to do any

1 further briefing on?

2 MR. ZWEIG: Not from our perspective, your Honor.

3 THE COURT: With that, Counsel, that's all we have
4 for today. Thank you very much. Have a great day.

5 THE DEPUTY COURT CLERK: All rise.

6 (Court concludes at 12:00 p.m.)

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